

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 52

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SEAN DAVID SOBOLESKI, and
JANE DEARWESTER SOBOLESKI,
Attorneys,

Defendants

COMPLAINT

Plaintiff, complaining of Defendants, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Sean David Soboleski ("Defendant"), was admitted to the North Carolina State Bar on March 24, 2001, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. Defendant, Jane Dearwester Soboleski ("Defendant"), was admitted to the North Carolina State Bar on August 24, 2001, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief, the State Bar alleges:

4. During some or all of the relevant periods referred to herein, Sean Soboleski and Jane Soboleski were engaged in the practice of law in the State of North Carolina and maintained a law office in Asheville, Buncombe County, North Carolina.

5. From July 1, 2012 through August 29, 2014, Defendants maintained three attorney trust accounts: Home Trust Bank trust account ending in no. 1115 (hereinafter "the general trust account"), Home Trust Bank trust account ending in no. 1412 (hereinafter "the real estate trust account"), and Mountain First Bank trust account ending in no. 3575 (hereinafter "the Mountain First trust account").

Account 1115 – General Trust Account

6. Defendants did not at least quarterly total the individual client balances and reconcile those and the general ledger balance to the bank statement balance for the general trust account as a whole.

7. Defendants did not always maintain accurate client ledgers.

8. Defendants did not record on checks the client balances against which the items were drawn.

9. Defendants did not indicate on the face of checks made payable to them the client balances from which the items were drawn.

10. Defendants made electronic transfers from the general trust account that did not record the client balances from which the transfers were made.

11. On occasion, Defendants disbursed funds from the general trust account for clients in excess of the amounts deposited into the account for those clients, including but not limited to the following clients: Ballard, Brightbill, T. Brown, Bruce, Dean, Gay, Jefferson, Lata, Malo, Mastos, McCracken, Miles, Peek, Rice, Rivers, Russo, Ryan, Shanahan, Stepp, Strickland, Turner, Turnip, and Weaver.

12. Defendants used funds held in a fiduciary capacity for other clients for some or all of the disbursements in excess of the deposits for the clients listed in the preceding paragraph.

13. Defendants misappropriated the funds drawn in excess of the deposits for those clients.

14. On occasion, Defendants disbursed funds to themselves from the general trust account attributable as fees earned for specific clients at a time when Defendants had not yet earned those fees, including but not limited to clients Bray and Justice.

15. Defendants misappropriated the funds disbursed to themselves but which they had not yet earned.

16. As of February 27, 2014, Defendants were obligated to hold in trust \$260.00 on behalf of client Turnip for the payment of costs to the North Carolina Court of Appeals.

17. On or about February 20, 2014, Defendants disbursed \$810.00 to themselves in payment of attorney fees from the funds they held on behalf of Turnip.

18. The \$810.00 disbursement from the Turnip account for payment of attorney fees depleted all the funds that had been deposited on behalf of Turnip, including the funds Defendants were obligated to hold for payment of costs to the North Carolina Court of Appeals.

19. Defendants misappropriated \$260.00 they were required to maintain in trust on behalf of client Turnip.

20. As of August 29, 2014, the balance in Defendants' general trust account was less than the amount of entrusted funds Defendants were required to maintain on behalf of their clients.

Account 1412 – Real Estate Trust Account

21. Defendants did not at least quarterly total the individual client balances and reconcile those and the general ledger balance to the bank statement balance for the real estate trust account as a whole.

22. Defendants did not always maintain accurate client ledgers.

23. Defendants did not record on checks the client balances against which the items were drawn.

24. Defendants did not indicate on the face of checks made payable to them the client balances from which the items were drawn.

25. Defendants made electronic transfers from the real estate trust account that did not record the client balances from which the transfers were made.

26. On occasion, Defendants disbursed funds from the real estate trust account for clients in excess of the amounts deposited into the account for those clients, including but not limited to clients Breedlove and Carmen.

27. Defendants used funds held in a fiduciary capacity for other clients for some or all of the disbursements in excess of the deposits for the clients listed in the preceding paragraph.

28. Defendants misappropriated the funds drawn in excess of the deposits for those clients.

Account 3575 – Mountain First Trust Account

29. Defendants did not at least quarterly total the individual client balances and reconcile those and the general ledger balance to the bank statement balance for the Mountain First trust account as a whole.

30. Defendants did not always maintain accurate client ledgers.

31. Defendants did not record on checks the client balances against which the items were drawn.

32. Defendants did not indicate on the face of checks made payable to them the client balances from which the items were drawn.

33. Defendants made electronic transfers from the Mountain First trust account that did not record the client balances from which the transfers were made.

34. On occasion, Defendants disbursed funds from the Mountain First trust account for clients in excess of the amounts deposited into the account for those clients, including but not limited to the following clients: Blitzler, Ferguson, Larke, McCauslin, Ratkovich, Serg, and Wiley.

35. Defendants used funds held in a fiduciary capacity for other clients for some or all of the disbursements in excess of the deposits for the clients listed in the preceding paragraph.

36. Defendants misappropriated the funds drawn in excess of the deposits for those clients.

THEREFORE, Plaintiff alleges that Defendants' foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendants violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By failing to at least quarterly total the individual client ledger balances and reconcile those and the general ledger balances with the adjusted bank statement balances for each trust account as a whole, Defendants failed to perform quarterly reconciliations of the trust accounts in violation of Rule 1.15-3(d);
- (b) By failing to maintain accurate client ledgers, by failing to record on checks the client balances against which the items were drawn, and by making electronic transfers that did not record the client balances on which the transfers were made, Defendants failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b);

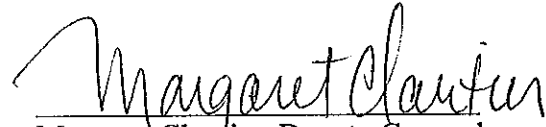
- (c) By failing to identify on trust account checks payable to Defendants the client balances from which the funds were drawn, Defendants failed to indicate on an item payable to the lawyer the client balances from which the item was drawn in violation of Rule 1.15-2(h);
- (d) By disbursing from the trust accounts more funds for various clients than they held in the accounts on behalf of those clients, Defendants failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on their honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (e) By disbursing funds to themselves from the general trust account attributable as fees earned for specific clients at a time when Defendants had not yet earned those fees, Defendants failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), obtained personal benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on their honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and
- (f) By failing to hold \$260.00 in trust on behalf of client Turnip and by failing to maintain sufficient funds in the general trust account for the benefit of their clients who should have had those funds in the account, Defendants failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed another to benefit from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), engaged in criminal conduct (embezzlement) reflecting adversely on their honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

WHEREFORE, Plaintiff prays that:

1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
2. Defendant be taxed with the administrative fees and with actual costs permitted by law in connection with the proceeding; and

3. For such other and further relief as the Hearing Panel deems appropriate.

The 10 day of November, 2015.



Margaret Cloutier, Deputy Counsel
State Bar No. 19878

Attorney for Plaintiff

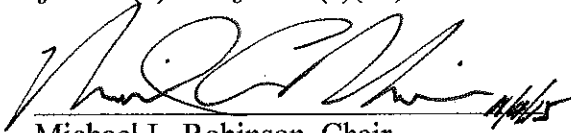
The North Carolina State Bar

P.O. Box 25908

Raleigh, NC 27611

919-828-4620

Signed pursuant to 27 N.C. Admin. Code 1B
§ .0113(n) and §.0105(a)(10).



Michael L. Robinson, Chair
Grievance Committee